

# Notice of Allowability

Application No.

10/087,782

Examiner

Fozia M Hamud

Applicant(s)

ROSIER ET AL.

Art Unit

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to The after final amendment filed on 07/20/04.
2. ☒ The allowed claim(s) is/are 1, 7, 17-24, (now <sup>renumbered</sup> 1-10, respectively).
3. ☒ The drawings filed on 03 July 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
JANET ANDRES  
PRIMARY EXAMINER

### **Examiner's Amendment**

1. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the Issue Fee.

Authorization for this Examiner's Amendment was given in a telephone interview with Attorney Joel B. German on 29 October 2004.

2. The application has been amended as follows:

#### ***IN THE CLAIMS:***

3a. In claim 1, line 1, after "comprising " insert ---the nucleotide sequence set forth in---

3b. In claim 7, line 1, before "gene " delete "ABCC11" substitute therefor -----ATP-binding Cassette C11 (ABCC11)---

3C. Please cancel claims 2-6 and 8-16, without prejudice or disclaimer.

#### ***Claim Rejections - 35 U.S.C. § 101/112:***

3a. Instant claims 1, 7, 17-24 are allowed. The rejection of claims 1, 7, 17-24 made under 101/112 for not being supported by either a specific and substantial asserted utility or a well established utility, is withdrawn. Applicants submit a reference that corroborates Applicants' asserted activity. The instant specification asserts that the polypeptide encoded by the claimed nucleic acid (ABCC11) confers drug resistance to nucleotide analogs, such as PMEA and purine base analogs. Guo et al (The Journal of biological Chemistry, Vol.278, No.32, pages 295099-29514, August 2003), disclose that

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ABCC11 (MRP8) is an amphipathic anion transporter that is able to confer resistance to praline and pyrimidine nucleotide analogs. These drugs are clinically relevant because they are anti-cancer, anti-hepatitis B agents etc.

***Advisory Information:***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fozia M Hamud whose telephone number is (571) 272-0884. The examiner can normally be reached on Monday, Thursday-Friday, 6:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda G Brumback can be reached on (571) 272-0961. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Fozia Hamud  
Patent Examiner  
Art Unit 1647  
29 October 2004